



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2011-N200]

[10120-1112-0000-F2]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit

Application; Habitat Conservation Plan and Associated Documents;

Meteorological Towers, Lanai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S Fish and Wildlife Service (Service), have received an application from Castle and Cooke Resorts, LLC (applicant) to renew the incidental take permit number TE194350-0, associated with an existing habitat conservation plan (HCP), under the Endangered Species Act of 1973, as amended (ESA). We request public comment on the permit renewal application and HCP, as well as on our preliminary determination that the action is covered under the environmental assessment completed for the initial permit issuance.

DATES: All comments from interested parties must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Please address written comments to Loyal Mehrhoff, Project Leader, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Honolulu, HI 96850. You may also send comments by facsimile to (808) 792-9580.

FOR FURTHER INFORMATION CONTACT: Bill Standley, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** above), telephone (808) 792-9400.

SUPPLEMENTARY INFORMATION: The applicant is requesting a six-year extension of an incidental take permit for incidental take of the endangered Hawaiian petrel (*Pterodroma sandwichensis*), endangered Hawaiian stilt (*Himantopus mexicanus knudseni*), endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*), and the threatened Newell's (Townsend's) shearwater (*Puffinus auricularis newelli*) on the island of Lanai, Hawaii. The applicant remains in compliance with all of the conditions and authorizations in the original permit and no take has been documented to date. The applicant is also applying to the Hawaii Department of Land and Natural Resources to extend their State incidental take license.

Availability of Documents

You may request copies of the permit application, which includes the application and the original HCP, by contacting the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** above). The original HCP and environmental assessment are also available electronically for review on the U.S. Fish and Wildlife Service Pacific Islands Fish and Wildlife Office website at <http://www.fws.gov/pacificislands>.

Comments and materials we receive will become part of the public record and will be available for public inspection by appointment, during regular business hours. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment

— including your personal identifying information — may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations prohibit the “take” of fish and wildlife species listed as endangered or threatened. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, under section 10(a) of the ESA (16 U.S.C. 1539(a)), we may issue permits to authorize incidental take of listed fish and wildlife species. Incidental take is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22. If the incidental take permit is renewed, the applicant would receive assurances under the Service’s “No Surprises” regulations at 50 CFR 17.32(b)(5) and 50 CFR 17.22(b)(5).

On September 26, 2008, we issued an incidental take permit to the applicant for incidental take of the endangered Hawaiian petrel, endangered Hawaiian stilt, endangered Hawaiian hoary bat, and the threatened Newell’s (Townsend’s) shearwater, pursuant to section 10(a)(1)(B) of the ESA. As required by section 10(a)(2)(A) of the ESA, the applicant has an existing HCP designed to minimize and mitigate any such take of the covered species caused by the construction and operation of up to seven meteorological towers on the island of Lanai. The applicant constructed six of the seven meteorological towers that were covered under the incidental take permit on private land that they own. The meteorological towers are used to collect data on wind patterns. The data are being

used to assess the suitability of the project site's wind regime to sustain a wind-turbine facility for electrical energy production. Each meteorological tower is 165-feet (50-meters) tall and each rests on a steel base plate approximately 9 square feet (0.8 square meter) in size. Each tower is supported with aircraft cable guy wires in four directions at each of six guy levels. The guy wire radius is 100 feet to 110 feet (30.5 to 33.5 meters). The guy wires are anchored with standard dead-man type anchors to a depth of 5 to 8 feet (1.5 to 2.4 meters). No listed species are known to inhabit the area in the immediate vicinity of the tower locations; however, incidental take may occur if individual birds or bats flying through the project site air space collide with the towers and guy wires.

Because of the uncertainty regarding the likelihood that listed species would collide with the meteorological towers and guy wires, the HCP established two tiers of mitigation that would be based on the take detected. The mitigation measures to offset the first tier of authorized take have been completed, and to date, no take of any listed species has been documented during the required monitoring program. The HCP included additional mitigation measures that would only be implemented should the first tier of take be exceeded. The completed mitigation included conducting predator control for a period of 2 years within the island's Hawaiian petrel colony, Newell's shearwater nesting habitat, and hoary bat habitat; conducting predator control for 2 years at the island's wastewater treatment plant, where Hawaiian stilts nest; and removing invasive plants, primarily strawberry guava (*Psidium cattleianum*), to facilitate the re-establishment of native vegetation within 3 acres of forest habitat adjacent to the Hawaiian petrel colony and within Newell's shearwater and hoary bat habitat.

During the implementation of the HCP, the applicant demonstrated that it was possible to manage the vegetation at meteorological tower sites such that searchers have a high probability of detecting any wildlife carcasses present and that carcasses were not being removed from the sites by scavengers. Therefore, the Service approved the modification of the monitoring protocol such that surveys were conducted every 30 days rather than 10 days, provided the vegetation was managed and carcass removal rates did not increase.

Prior to the expiration of the incidental take permit in March 2010, the applicant requested that the permit be extended for 6 years (through March 1, 2016). In accordance with regulations at 50 CFR 13.22(c), the applicant may continue the activities authorized by the expired permit until the Service has acted on the application for renewal. While the applicant has since removed five of the six towers originally constructed, the incidental take permit extension would cover the operation of all seven towers so that the applicant could reinstall and operate the meteorological towers without further amending the incidental take permit should additional wind data be needed. The applicant agreed to extend their Memorandum of Understanding with the State of Hawaii, which implemented the mitigation measures on behalf of the applicant, to ensure that the State continues to have access to manage and monitor the mitigation site for the full term of the incidental take permit. The applicant also extended a Performance Bond secured to fund additional mitigation should it be required.

Preliminary Determination

The Service has made a preliminary determination that the Biological Opinion, Environmental Assessment, Finding of No Significant Impact, and Set of Findings that

were previously approved in support of issuance of the original incidental take permit do not require revision because there is no new information relating to the impacts of this action, no additional impacts expected beyond those originally assessed, the required mitigation actions have been implemented pursuant to the existing HCP, and no incidental take has been documented.

Authority

This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 et seq.) and NEPA regulations (40 CFR 1506.6). The public process for the proposed Federal action will be completed after the public comment period, at which time we will evaluate the permit renewal application and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA, applicable regulations, and NEPA requirements. If we determine that those requirements are met, we will renew the incidental take permit.

Dated: ____ October 28, 2011_____

Richard R. Hannan
Deputy Regional Director,
Pacific Region,
Portland, Oregon.